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apply to the property related payment rate for rate years beginning on or after July 1, 1990.

- (1) A nursing facility's refinancing must not include debts with balloon payments.
- (2) If the issuance costs, including issuance costs on the debt refinanced, are financed as part of the refinancing, the historical cost of capital asset limit includes issuance costs that do not exceed seven percent of the debt refinanced, plus related issuance costs. For purposes of this section, issuance costs means the fees charged by the underwriter, issuer, attorneys, bond raters, appraisers, and trustees, and includes the cost of printing, title insurance, registration tax, and a feasibility study for the refinancing of a nursing facility's debt. Issuance costs do not include bond premiums or discounts when bonds are sold at other than their par value, points, or a bond reserve fund. To the extent otherwise allowed under this paragraph, the straight line amortization of the refinancing costs is not an allowable cost.
- (3) The annual principal and interest expense payments and any required annual municipal fees on the nursing facility's refinancing replace those of the refinanced debt and, together with annual principal and interest payments on other allowable debts, are allowable costs subject to the limitation in subitem (2), if any.
- (4) If the nursing facility's refinancing includes zero coupon bonds, the Commissioner shall establish a monthly debt service payment schedule based on an annuity that will produce an amount equal to the zero coupon bonds at maturity. The term and interest rate is the term and interest rate of the zero coupon bonds. Any refinancing to repay the zero coupon bonds is not an allowable cost.
- (5) The annual amount of the annuity payments is added to the nursing facility's allowable annual principal and interest expense payment computed in subitem (3).
- (6) The property related payment rate is equal to the amount in subitem (5) divided by the nursing facility's capacity days as determined in Section ~~16.130~~ 16.110, for the preceding reporting year plus an equipment allowance.
- (7) Except as provided in this section, the previously outlined methodology for the calculation of property payment rates applies.

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SECTION 16.136 Property payment rates for rate years beginning on or after July 1, 1990. For purposes of property-related reimbursement under this section, nursing facilities will be grouped according to the type of property related payment rate the Commissioner of Human Services for the rate year beginning July 1, 1989. A nursing facility whose property rate was determined under full rental shall be considered group A. A facility whose property payment rate was determined under phase down to rental reimbursement shall be considered group B. A facility whose rate was determined under the phase up provisions will be considered group C.

A. For the rate year beginning July 1, 1990, a group A facility will continue to have its property-related payment rate determined in accordance with the provisions of Section 16.080.

B. For the rate year beginning July 1, 1990, a group B facility will receive a payment related rate equal to the greater of:

(1) 87% of the property related payment rate in effect on July 1, 1989; or

(2) the rental per diem calculated in accordance with the provisions of Section 16.080 and this section; or

(3) the sum of 100% of the nursing facilities allowable principal and interest expense; plus its equipment allowance multiplied by the resident days for the reporting year ending September 30, 1989, divided by the nursing facilities capacity days.

C. For the rate year beginning July 1, 1990, a group C facility will have its property related payment rate calculated under the provisions of Section 16.130 item C and this section, except that its property related payment rate cannot exceed the lesser of its property related payment rate established for the rate year beginning July 1, 1989, multiplied by 116% or the rental per diem determined effective July 1, 1990.

D. The property related payment rate for a nursing facility that qualifies for a special reappraisal will have the applicable property related payment rate as calculated above and as adjusted in accordance with the provisions of Section 16.030.

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E. Except as provided in Section 16.130, item F, and Section 16.132, a nursing facility that has a change of ownership or a reorganization of provider entity is subject to the provisions of Section 16.130, item F.

F. Except as provided in Section 16.133, a nursing facility will have its property related payment rate calculated according to items A to E. Those nursing facilities whose property related payment rates are calculated under the provisions of Section 16.133 will receive a property related payment rate equal to the greater of the rate calculated under Section 16.133 or that rate applicable under items A to E.

SECTION 16.1370 Hold-harmless property-related rates.

A. Terms used in Sections 16.1370 to 16.1378 shall be as defined in the plan. Capital assets for purposes of Sections 16.1370 to 16.1378 only means a nursing facility's buildings, attached fixtures, land improvements, leasehold improvements, and all additions to or replacements of those assets used directly for resident care.

B. Except as provided in this section, for rate periods beginning on October 1, 1992, and for rate years beginning after June 30, 1993, the property-related rate for a nursing facility shall be the greater of \$4 or the property-related payment rate in effect on September 30, 1992. In addition, the incremental increase or decrease in the nursing facility's rental rate will be determined under this plan. An incremental decrease with an effective date after June 30, 1993, must reduce the nursing facility's property related payment rate.

C. Notwithstanding Section 16.130, item F, a nursing facility that has a sale permitted under Section 16.1371 after June 30, 1992, shall receive the property-related payment rate in effect at the time of the sale or reorganization. For rate periods beginning after October 1, 1992, a nursing facility shall receive, in addition to its property-related payment rate in effect at the time of the sale, the incremental increase allowed under Section 16.1371. For rate years beginning after June 30, 1993, a nursing facility shall receive, in addition to its property-related payment rate in effect at the time of the sale, the incremental increase or decrease allowed under Section 16.1371.

D. For rate years beginning after June 30, 1993, the property-related rate for a nursing facility licensed after July 1, 1989 that was sold during the cost reporting year ending September 30, 1991 (after relocating its beds from a separate nursing home to a building formerly used as a hospital) is its property-related rate before the sale plus:

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(1) the incremental increase effective October 1, 1992 of 29 cents per day; and

(2) any incremental increases after October 1, 1992 calculated by using its rental rate, recognizing the current appraised value of the facility at the new location, and including as allowable debt otherwise allowable debt incurred to remodel the facility in the new location before relocating its beds.

Section 16.1371 Limitations on sales of nursing facilities.

A. For rate periods beginning on October 1, 1992, and for rate years beginning after June 30, 1993, a nursing facility's property-related payment rate as established under Section 16.1370 shall be adjusted by either item B or C for the sale of the nursing facility, including sales occurring after June 30, 1992, as provided in this Section.

B. If the nursing facility's property-related payment rate under Section 16.1370 prior to sale is greater than the nursing facility's rental rate under this plan prior to sale, the nursing facility's property-related payment rate after sale shall be the greater of its property-related payment rate under Section 16.1370 prior to sale or its rental rate under this plan calculated after sale.

C. If the nursing facility's property-related payment rate under Section 16.1370 prior to sale is equal to or less than the nursing facility's rental rate under this plan prior to sale, the nursing facility's property-related payment rate after sale shall be the nursing facility's property-related payment rate under Section 16.1370 plus the difference between its rental rate calculated under this plan prior to sale and its rental rate calculated under this plan calculated after sale.

D. For purposes of this section, "sale" means the purchase of a nursing facility's capital assets with cash or debt. The term sale does not include a stock purchase of a nursing facility or any of the following transactions:

(1) a sale and leaseback to the same licensee that does not constitute a change in facility license;

(2) a transfer of an interest to a trust;

(3) gifts or other transfers for no consideration;

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(4) a merger of two or more related organizations;

(5) a change in the legal form of doing business, other than a publicly held organization that becomes privately held or vice versa;

(6) the addition of a new partner, owner, or shareholder who owns less than 20 percent of the nursing home or the issuance of stock; and

(7) a sale, merger, reorganization, or any other transfer of interest between related organizations other than those permitted in this section.

E. For purposes of this item, "sale" includes the sale or transfer of a nursing facility to a close relative as defined in Section 1.030, upon the death of an owner, due to serious illness or disability, as defined under the Social Security Act, under 42 U.S.C. §423(d)(1)(A), or upon retirement of an owner from the business of owning or operating a nursing home at 62 years of age or older. For sales to a close relative allowed under this item otherwise nonallowable debt resulting from seller financing of all or a portion of the debt resulting from the sale shall be allowed and shall not be subject to Section 16.050, item E, provided that in addition to existing requirements for allowance of debt and interest, the debt is subject to repayment through annual principal payments and the interest rate on the related organization debt does not exceed three percentage points above the posted yield for standard conventional fixed rate mortgages of the Federal Home Loan Mortgage Corporation for delivery in 60 days in effect on the day of sale. If at any time the seller forgives the related organization debt allowed under this item for other than equal amount of payment on that debt, then the buyer shall pay to the State the total revenue received by the nursing facility after the sale attributable to the amount of allowable debt which has been forgiven. Any assignment, sale, or transfer of the debt instrument entered into by the close relatives, either directly or indirectly, which grants to the close relative buyer the rights to receive all or a portion of the payments under the debt instrument shall, effective on the date of the transfer, result in the prospective reduction in the corresponding portion of the allowable debt and interest expense. Upon the death of the close relative seller, any remaining balance of the close relative debt must be refinanced and such refinancing shall be subject to the provisions of Section 16.070, item G. This paragraph shall not apply to sales occurring on or after June 30, 1997.

F. For purposes of this section, "effective date of sale" means the later of either the date on which legal title to the capital assets is transferred or the date on which closing for the sale occurred.

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G. The effective day for the property-related payment rate determined under this section shall be the first day of the month following the month in which the effective date of sale occurs or October 1, 1992, whichever is later.

H. Notwithstanding Section 16.050, item A, subitems (3) and (4), and Section 16.050, items E and F, the Commissioner shall limit the total allowable debt and related interest for sales occurring after June 30, 1992, to the sum of subitems (1) to (3):

(1) the historical cost of capital assets, as of the nursing facility's most recent previous effective date of sale or, if there has been no previous sale, the nursing facility's initial historical cost of constructing capital assets;

(2) the average annual capital asset additions after deduction for capital asset deletions, not including depreciations; and

(3) one-half of the allowed inflation on the nursing facility's capital assets. The Commissioner shall compute the allowed inflation as described in item I.

I. For purposes of computing the amount of allowed inflation, the Commissioner must apply the following principles:

(1) the lesser of the Consumer Price Index for all urban consumers or the Dodge Construction Systems Costs for Nursing Homes for any time periods during which both are available must be used. If the Dodge Construction Systems Costs for Nursing Homes becomes unavailable, the Commissioner shall substitute the index in Section 16.040, item A, subitem (4), or such other index as the secretary of the health care financing administration may designate;

(2) the amount of allowed inflation to be applied to the capital assets in item G subitems (1) and (2), must be computed separately;

(3) the amount of allowed inflation must be determined on an annual basis, prorated on a monthly basis for partial years and if the initial month of use is not determinable for a capital asset, then one-half of that calendar year shall be used for purposes of prorating;

(4) the amount of allowed inflation to be applied to the capital assets in item G, subitems (1) and (2), must not exceed 300 percent of the total capital assets in any one of those clauses; and

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(5) the allowed inflation must be computed starting with the month following the nursing facility's most recent previous effective date of sale or, if there has been no previous sale, the month following the date of the nursing facility's initial occupancy, and ending with the month preceding the effective date of sale.

J. If the historical cost of a capital asset is not readily available for the date of the nursing facility's most recent previous sale or if there has been no previous sale for the date of the nursing facility's initial occupancy, then the Commissioner shall limit the total allowable debt and related interest after sale to the extent recognized by the Medicare intermediary after the sale. For a nursing facility that has no historical capital asset cost data available and does not have allowable debt and interest calculated by the Medicare intermediary, the Commissioner shall use the historical cost of capital asset data from the point in time for which capital asset data is recorded in the nursing facility's audited financial statements.

K. The limitations in this subdivision apply only to debt resulting from a sale of a nursing facility occurring after June 30, 1992, including debt assumed by the purchaser of the nursing facility.

SECTION 16.1372 Capital repair and replacement cost reporting and rate calculation.

For rate years beginning after June 30, 1993, a nursing facility's capital repair and replacement payment rate shall be established annually as provided in items A to E.

A. Notwithstanding Section 16.120, the costs of any of the following items, not included in the equity incentive computation under Section 16.1373 or reported as a capital asset addition under Section 16.375, item B, including cash payment for equity investment and principal and interest expense for debt financing, must be reported in the capital repair and replacement cost category when the cost of the item exceeds \$500:

- (1) wall coverings;
- (2) paint;
- (3) floor coverings;
- (4) window coverings;

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(5) roof repair; and

(6) window repair or replacement

B. Notwithstanding Section 16.120, the repair or replacement of a capital asset not included in the equity incentive computations under Section 16.1373 or reported as a capital asset addition under Section 16.1375, item B, must be reported in the capital repair and replacement cost category when the cost of the item exceeds \$500, or in the plant operations and maintenance cost category when the cost of the item is equal to or less than \$500.

C. To compute the capital repair and replacement payment rate, the allowable annual repair and replacement costs for the reporting year must be divided by actual resident days for the reporting year. The annual allowable capital repair and replacement costs shall not exceed \$150 per licensed bed. The excess of the allowed capital repair and replacement costs over the capital repair and replacement limit shall be a cost carryover to succeeding cost reporting periods, except that sale of a facility, under Section 16.1371, shall terminate the carryover of all costs except those incurred in the most recent cost reporting year. The termination of the carryover shall have effect on the capital repair and replacement rate on the same date as provided in Section 16.1371, item F, for the sale. For rate years beginning after June 30, 1994, the capital repair and replacement limit shall be subject to the index provided in Section 16.040, item A, subitem (4). For purposes of this section, the number of licensed beds shall be the number used to calculate the nursing facility's capacity days. The capital repair and replacement rate must be added to the nursing facility's total payment rate.

D. Capital repair and replacement costs under this Section shall not be counted as either care-related or other operating costs, nor subject to care-related or other operating limits.

E. If costs otherwise allowable under this section are incurred as the result of a project approved under the moratorium exception process or in connection with an addition to or replacement of buildings, attached fixtures, or land improvements for which the total historical cost of these assets exceeds the lesser of \$150,000 or ten percent of the nursing facility's appraised value, these costs must be claimed under Sections 16.1373 or 16.1374 as appropriate.

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SECTION 16.1373 Major additions and replacements; equity incentive. For rate years beginning after June 30, 1993, if a nursing facility acquires capital assets in connection with a project approved under the moratorium exception process or in connection with an addition to or replacement of buildings, attached fixtures, or land improvements for which the total historical cost of those capital asset additions exceeds the lesser of \$150,000 or ten percent of the most recent appraised value, the nursing facility shall be eligible for an equity incentive payment rate as in items A to D. This computation is separate from the determination of the nursing facility's rental rate. An equity incentive payment rate as computed under this subdivision is limited to one in a 12-month period.

A. An eligible nursing facility shall receive an equity incentive payment rate equal to the allowable historical cost of the capital asset acquired, minus the allowable debt directly identified to that capital asset, multiplied by the equity incentive factor as described in items B and C and divided by the nursing facility's occupancy factor under Section 16.090, items C or D. This amount shall be added to the nursing facility's total payment rate and shall be effective the same day as the incremental increase in item D or Section 16.1374. The allowable historical cost of the capital assets and the allowable debt shall be determined as provided in this plan.

B. The equity incentive factor shall be determined under subitems (1) to (4):

(1) divide the initial allowable debt in item A by the initial historical cost of the capital asset additions referred to in item A, then cube the quotient,

(2) subtract the amount calculated in subitem (1) from the number one,

(3) determine the difference between the rental factor and the lesser of two percentage points above the posted yield for standard conventional fixed rate mortgages of the Federal Home Loan Mortgage Corporation as published in the Wall Street Journal and in effect on the first day of the month the debt or cost is incurred, or 16 percent,

(4) multiply the amount calculated in subitem (2) by the amount calculated in subitem (3).

C. The equity incentive payment rate shall be limited to the term of the allowable debt in item A, not greater than 20 years nor less than ten years. If no debt is incurred in acquiring the capital asset, the equity incentive payment rate shall be paid for ten years. The sale of a

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nursing facility under Section 16.1371 shall terminate application of the equity incentive payment rate effective on the date provided in Section 16.1371, item F, for the sale.

D. A nursing facility with an addition to or a renovation of its buildings, attached fixtures, or land improvements meeting the criteria in this section and not receiving the property-related payment rate adjustment in Section 16.1374, shall receive the incremental change in the nursing facility's rental rate as determined under this plan. The incremental change shall be added to the nursing facility's property-related payment rate. The effective date of this incremental change shall be the first day of the month following the month in which the addition or replacement is completed.

SECTION 16.1374 Special provisions for exceptions.

A. Notwithstanding Section 16.030 for rate periods beginning on October 1, 1992, and for rate years beginning after June 30, 1993, a nursing facility that has completed a renovation, replacement, or upgrading project approved under the moratorium exception process, or a nursing facility that has received a statutory exception after June 30, 1995, except for a 115 bed county owned nursing facility which has received a statutory exception in 1993, shall be reimbursed for costs directly identified to that project as provided in Section 16.1373 and this section.

B. Notwithstanding Section 16.050, item A, subitems (1) and (3), and Section 16.070, item D, allowable interest expense on debt shall include:

(1) interest expense on debt related to the cost of purchasing or replacing depreciable equipment, excluding vehicles, not to exceed six percent of the total historical cost of the project; and

(2) interest expense on debt related to financing or refinancing costs, including costs related to points, loan origination fees, financing charges, legal fees, and title searches; and issuance costs including bond discounts, bond counsel, underwriter's counsel, corporate counsel, printing, and financial forecasts. Allowable debt related to items in this clause shall not exceed seven percent of the total historical cost of the project. To the extent these costs are financed, the straight-line amortization of the costs in this clause is not an allowable cost; and